IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2023

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THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No. 31533 of 2014

Ananthalakshmi .... Petitioner

Vs

1. The Transport Commissioner,
Chepauk, Chennai – 5.

2. The Principal Secretary to Government,
Home (Tr.IIA) Department,
Secretariat, Chennai – 9. .... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certioroarified Mandamus to call for the records pertaining to the order passed by the first respondent herein in his Proc.No.V1/32224/2004 dated 24.07.2006 imposing a punishment of removal from service on the petitioner's husband and the consequential order passed by the second respondent herein in G.O(D) No.242, Home (Tr.IIA) Department dated 07.04.2014 confirming the punishment of removal from service and quash the same and consequently direct the respondents herein to pay the petitioner all the consequential monetary and retirement benefits due to her husband within a stipulated time.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondents : Mr.V.Veluchamy
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order dated 24.07.2006 passed in Proc.No.V1/32224/2004 by the first respondent, thereby removed the petitioner's husband from service.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

3. The petitioner's husband had joined as Junior Assistant in the Transport Department on 17.06.1980. Subsequently, he was promoted as Assistant in the month of April 1987. Further, he was promoted as Superintendent on 17.06.2002 and he attained the age of superannuation as early as on 31.03.2009. While he was in service, on 23.05.2005, the Deputy Transport Commissioner, Trichirappalli, framed charges under Section 17(b), alleging that while he was working in Superintendent in

Mayiladuthurai Unit Office had failed to notice non-remittance of Green Tax collection into Government account and attested bogus entries made by the Junior Assistant viz., Jambulingam. There were four charges and all related to non collection of Green Tax and being a party to the irregularities committed by the subordinate staff. There was no direct allegation as against the petitioner.

4. Without being satisfied with the explanation submitted by the petitioner, an enquiry was conducted and the Enquiry Officer concluded that the fourth charge was not proved and the remaining three charges were proved. The Enquiry Officer also observed the confession of the co-accused accepting sole liability in the crime and he also promising to recoup the loss to the Government Exchequer, the charge to the extent of negligence as levelled has been proved beyond any doubt. Therefore, no ulterior motive except for negligence in his duty. The punishment imposed on him is disproportionate to the charges levelled against him. Therefore, the major penalty cannot be issued as contemplated under Section 17(b) of the Tamil Nadu Subordinate Service Rules for an allegation of negligence of

duty without dishonest motive.

5. In fact, the Junior Assistant viz., Jambulingam had admitted his guilt and thereafter remitted the amounts misappropriated by him and further submitted that the petitioner's husband was innocent. However, the petitioner was removed from service, by the impugned order dated 24.07.2006 by the first respondent. Aggrieved by the same, the petitioner's husband preferred an appeal to the Government viz., second respondent herein and the same was also dismissed by another impugned order dated 07.04.2014. Pending appeal, the petitioner's husband died.

6. The learned counsel appearing for the petitioner also pointed out that similarly placed persons, on the allegation of misappropriation of Government money, had imposed punishment to stoppage of increments and also relied upon the seven persons, who is working as Junior Assistant and Assistant. Therefore, imposing a punishment of removal from service for an allegation of negligence in official duty without any allegation of misappropriation against the petitioner's husband is excessive and

discriminatory.

7. On perusal of the counter filed by the respondents revealed that though the employees who were imposed stoppage of increment not in both cases, as far as the petitioner's husband is concerned, he was not a Government Servant and he was removed from the service consequent to the proven charges as alleged in the registration certificate of the vehicles without collecting the Green Tax for the vehicle. Therefore, he committed very serious offence and as such, the respondent rightly imposed punishment of removal from service. Hence, the petitioner, being wife of the delinquent, is entitled for the General Provident Fund contributed by her husband, when he was in service. Admittedly, the petitioner was working as a Superintendent at Mayiladuthruai Unit at the time of alleged crime committed by the deceased Jambulingam. All the charges were framed against him that he failed to notice non-remittance of Green Tax collection into Government account and attested bogus entries made by the Junior Assistant Jambulingam. In fact, the Junior Assistant also made statement before the Enquiry Officer. That apart, the fourth charge levelled against the

petitioner was not proved.

8. It is relevant to extract the fourth charge levelled as against the petitioner's husband has in collusion and conspiracy with Jambulingam, Junior Assistant, made attestations to the bogus entries made in the registration book. Therefore, the 4^{th} charge is not proved. Insofar as the other charges were only that he failed to supervise the ledger produced by the Junior Assistant. Therefore, the husband of the petitioner has no ulterior motive except for negligence in his duty. Therefore, the capital punishment cannot be issued for an allegation of the negligence of duty that too without dishonest motive. That apart, similarly placed employees viz., the Junior Assistants were framed charges of misappropriation and they were punished with stoppage of increments.

9. The learned counsel appearing for the petitioner relied upon the Judgment of the Hon'ble Supreme Court of India reported in ***(2008) 12 SCC 331*** in the case of ***Man Singh Vs. State of Haryana and Others,*** in which the Honble Supreme Court of India, held that the concept of equality

as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness. Therefore, this Court finds the punishment imposed on the petitioner's husband is certainly excessive and discriminatory.

10. Therefore, the order of removal from service of the petitioner's husband cannot be sustained and is liable to be set aside. However, he could be imposed punishment of stoppage of increment for a period of three years with cumulative effect. Accordingly, the impugned order dated 24.07.2006 in Proc.No.V1/32224/2004 is hereby set aside and the petitioner's husband is punished with stoppage of increment for a period

of three years with cumulative effect. The petitioner is entitled for 50% of back wages, terminal benefits and other attendant benefits.

11. In the result, this Writ Petition is partly allowed. No costs.

13.07.2023

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Index:Yes/No
Internet:Yes/No

To

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G.K.ILANTHIRAIYAN,J.

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